

**SECRET FILE COPY**

FCC MAIL SECTION Before the  
Federal Communications Commission  
Washington, D.C. 20554

JUN 8 12 58 PM '94

MM Docket No. 94-41 ✓

DISPATCHED BY  
In the Matter of

Amendment of Section 73.202(b), RM-8443  
Table of Allotments,  
FM Broadcast Stations.  
(Cordova, Alabama)

### NOTICE OF PROPOSED RULE MAKING

Adopted: April 29, 1994; Released: May 31, 1994

Comment Date: July 22, 1994

Reply Comment Date: August 1, 1994

By the Acting Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed on behalf of New Century Radio, Inc. ("NCRI") ("petitioner"), licensee of Station WFFN(FM), Cordova, Alabama,<sup>1</sup> seeking the substitution of Channel 237A for Channel 223A at Cordova and modification of its authorization accordingly.

### BACKGROUND

2. Petitioner is presently licensed to operate Station WFFN(FM) as a 6 kilowatt facility on Channel 237A at Cordova pursuant to the provisions of Section 73.215 of the Commission's Rules at coordinates 33-50-42 and 87-18-26. Petitioner previously requested modification of its license to specify operation on Channel 254C3 or Channel 254A at Cordova but was modified to Channel 223A at a restricted site, in the context of a comparative proceeding in MM Docket No. 90-476 to accommodate its desire to expand its coverage area. See 7 FCC Rcd 5489 (1992).<sup>2</sup> Petitioner states that Channel 223A requires a relocation of its transmitter site to an area at least 9 kilometers (5.6 miles) south of Cordova to comply with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules. Petitioner states that the site restriction placed on Channel 223A at Cordova would remove it from

its core market and would result in the loss of a second and third city grade signal to 21,604 persons. Moreover, petitioner advises that its relocation on Channel 223A would deliver Station WFFN(FM)'s signal to areas presently well served by signals in the Birmingham area. Specifically, petitioner states that operation of Station WFFN(FM) on Channel 223A would result in the provision of a ninth 70 dBu service to approximately 26,480 people, a second city grade service to approximately 65 people in an area comprising less than one square kilometer; and a third 70 dBu signal to approximately 566 people in an area of 14.4 square kilometers. If permitted to remain on Channel 237A, petitioner asserts that Station WFFN(FM) would provide a second 70 dBu signal to 7,384 people in an area of 118.3 square kilometers, as well as a third city grade signal to 14,220 people in an area of 134.4 square kilometers.

3. We believe the public interest would be served by proposing the substitution of Channel 237A for Channel 223A at Cordova since it would enable Station WFFN(FM) to expand its coverage area. Therefore, we propose to modify petitioner's license for Station WFFN(FM) to specify operation on Channel 237A, as requested.

### Technical Statement

4. Channel 237A can be allotted to Cordova at the petitioner's specified site at coordinates 33-49-01 and 87-11-55 consistent with the technical requirements of the Commission's Rules.<sup>3</sup>

5. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Cordova, Alabama, as follows:

City	Channel No.	
	Present	Proposed
Cordova, Alabama	223A	237A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **July 22, 1994**, and reply comments on or before **August 1, 1994**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Fed-

<sup>1</sup> An application (File No. BALH-930903G0) for assignment of license from Radio South, Inc. ("RSI") to New Century Radio, Inc. was granted September 27, 1993. According to petitioner, Mr. Houston L. Pearce is the majority stockholder of both RSI and NCRI.

<sup>2</sup> Petitioner filed a petition for reconsideration of the Commission's action in MM Docket No. 90-476, but subsequently withdrew its request pursuant to a settlement agreement with North Jefferson Broadcasting Company, Inc., permittee of Channel 254A, Warrior, Alabama. See 8 FCC Rcd 7087 (1993).

<sup>3</sup> The requested allotment of Channel 237A at Cordova is short-spaced to the reference coordinates for Channel 238A at Holly

Pond, as well as to the construction permit for Channel 238A at that community (File No. BPH-900122NT). However, the Holly Pond authorization already affords contour protection to Station WFFN(FM) on Channel 237A pursuant to the provisions of Section 73.215 of the Commission's Rules. While we have determined that issuance of this *Notice of Proposed Rule Making* is appropriate at this time, final action in this proceeding may be withheld until a license is issued to cover the construction permit on Channel 238A at Holly Pond. A copy of this *Notice* will be served on Good Earth Broadcasting, the permittee of Channel 238A at Holly Pond.

eral Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Erwin G. Krasnow, Esq.  
Verner, Liipfert, Bernhard  
McPherson and Hand  
901 - 15th Street, N.W.  
Suite 700  
Washington, D.C. 20005-2301

8. IT IS ORDERED, That a copy of this *Notice of Proposed Rule Making* be sent by Certified Mail, Return Receipt Requested, to the permittee for Channel 238A, Holly Pond, Alabama, as follows: Good Earth Broadcasting, Inc., P.O. Box 968, Cullman, AL 35056.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

#### FEDERAL COMMUNICATIONS COMMISSION

Victoria M. McCauley  
Acting Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

#### APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.